

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

## DONALD ISAAC JOHNSON.

**Plaintiff,**

V.

## MONROE CORRECTIONAL COMPLEX et al.

### Defendants.

CASE NO. C13-5167 RBL-JRC

**REPORT AND RECOMMENDATION  
TO DENY IN FORMA PAUPERIS  
STATUS AND WARN PLAINTIFF**

NOTED FOR:  
APRIL 19, 2013

The District Court has referred this 42 U.S.C. § 1983 civil rights action to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4.

Plaintiff asks that the Court grant him in forma pauperis status (ECF No. 1). The Court recommends denying the motion and dismissing this action, warning plaintiff that he may face sanctions if he continues filing this claim improperly. Plaintiff should not be given the option of paying the filing fee. The action cannot proceed as a civil rights action until and unless plaintiff's conviction is overturned through habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 487 (1994).

1 Plaintiff is an inmate being held at the Federal Detention Center. Plaintiff seeks to  
2 challenge a conviction and sentence for trespass and voyeurism in a civil rights action. Plaintiff  
3 seeks monetary damages (ECF No. 1, proposed complaint). Normally, the Court would file a  
4 report and recommendation to dismiss the action without prejudice so that plaintiff could file a  
5 habeas corpus petition to challenge his conviction and sentence. The Court may or may not grant  
6 in forma pauperis status in such cases.

7 The Court's review of plaintiff's litigation history shows that plaintiff has raised this  
8 issue three times as a pauper. Plaintiff is abusing the statute that allows for the filing of actions in  
9 forma pauperis. 28 U.S.C. § 1915. Plaintiff currently has a habeas petition pending where he  
10 challenges the convictions that are the subject of his current complaint. *See, Johnson v. Monroe*  
11 *Correctional Complex*, 13-5008RBL/JRC. Further, plaintiff has obtained in forma pauperis  
12 status and attempted to challenge these same convictions and sentence in civil rights actions  
13 three other times:

- 14 1. Johnson v. Gildehaus 12-5818RBL/KLS
- 15 2. Johnson v. State of Washington 12-5839BHS/KLS
- 16 3. Johnson v. State of Washington 12-5864RBL/JRC.

17 Plaintiff's repetitive filings are vexatious and malicious. The district court may permit  
18 indigent litigants to proceed in forma pauperis upon completion of a proper affidavit of  
19 indigence. *See* 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an  
20 application to proceed in forma pauperis and the Court may consider prior filings. *O'Loughlin v.*  
21 *John Doe*, 920 F.2d 614, 616-17 (9th Cir. 1990). Given plaintiff's prior litigation history the  
22 Court recommends denying plaintiff's motion to proceed in forma pauperis and warning plaintiff  
23 that further improper filings may result in sanctions.

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1 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
2 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
3 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
4 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
5 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on April  
6 19, 2013, as noted in the caption.

7 Dated this 19<sup>th</sup> day of March, 2013.

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10 J. Richard Creatura  
United States Magistrate Judge

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